

REMARKS**I. Status of Claims**

Upon entry of this amendment, claims 1-40 and 43-53 are pending in the application. Claims 1, 20, 27, 39, 48, and 52-53 have been amended. The amendments introduce no new subject matter.

II. Objections to the Claims

Claims 1-40 and 43-53 have been objected to for the following alleged informalities:

Claims 1, 27, 52, and 53 have been objected to for recitation of a Figure and the corresponding SEQ ID NO in parenthesis. Applicants have amended the claims as suggested by the Examiner to remove the Figure reference and the parenthesis.

Claim 20 has been objected to for the text “21.” Applicants have amended the claim to remove the cited text.

Claim 39 has been objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to the other claims in the alternative only. Applicants have amended the claim to recite “any one of” as suggested by the Examiner.

Claim 48 has been objected to for the SEQ ID NO recitations. Applicants have amended the claim to recite “SEQ ID NO: ” as suggested by the Examiner.

Applicants respectfully request the withdrawal of the objections to claims 1-40 and 43-53.

III. Rejection for Obviousness-type Double Patenting

Claims 1, 5-11, 19-21, 52 and 53 are rejected as allegedly unpatentable over claims 1, 16-22, 30-32 of U.S. Patent No. 7,211,659.

Applicants respectfully traverse the rejection and its supporting remarks. When, as in this case, the patent cited was filed later than the pending application and the patent could not have been filed at the same time, a two way obviousness analysis is applied. The pending application was filed July 5, 2000. By contrast, the earliest claim of priority for the cited patent was July 5, 2001, one year later. The Applicants have been diligently pursuing the claims in the pending patent application and therefore have not intentionally delayed its prosecution.

The issued claims 1, 16-22, 30-32 of U.S. Patent No. 7,211,659 are not obvious in view of the pending claims 1, 5-11, 19-21, 52 and 53. While SEQ ID NO: 9 of the '659 patent may have a portion that is at least 90% identical to SEQ ID NOs: 30-32 which may therefore anticipate the pending open-ended claims, the opposite certainly does not apply. SEQ ID NOs: 30-32 do not have 90% identity to the longer SEQ ID NO: 9 as they are simply too short. SEQ ID NO:9 in U.S. Patent No. 7,211,659 is 3930 nucleotides in length. By contrast, SEQ ID NO: 30 of the present application is 2469 nucleotides in length. Since two-way obviousness does not apply, obviousness-type double patenting does not apply.

Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 1, 5-11, 19-21 52 and 53.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing **Docket No. 223002109720**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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